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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the Publication and Distribution  
of the  
Hawai'i Pattern Jury Instructions - Criminal

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ORDER APPROVING PUBLICATION AND DISTRIBUTION  
OF HAWAI'I PATTERN JURY INSTRUCTIONS - CRIMINAL  
(By: Recktenwald, C.J., for the court<sup>1</sup>)

Upon consideration of the Pattern Criminal Jury Instructions Standing Committee's request to publish and distribute the (1) repeal of Criminal Instruction 7.01; (2) addition of Criminal Instructions 7.01A and 7.01B; and (3) revisions to Criminal Instructions 10.00, 10.29, 10.29A, 10.30, 10.30A, 10.31, 10.31A, and 13.49 to the Hawai'i Pattern Jury Instructions - Criminal,

IT IS HEREBY ORDERED, that the request is granted and the attached criminal jury instructions 7.01A, 7.01B, 10.00, 10.29, 10.29A, 10.30, 10.30A, 10.31, 10.31A, and 13.49 are approved for publication and distribution.

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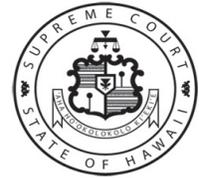
<sup>1</sup> Considered by: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.

IT IS FURTHER ORDERED that this approval for publication and distribution is not and shall not be considered by this court or any other court to be an approval or judgment as to the validity or correctness of the substance of any instruction.

DATED: Honolulu, Hawai'i, April 4, 2011.

FOR THE COURT:

/s/ Mark E. Recktenwald  
Chief Justice



## 7.01. Self-Defense

~~Justifiable use of force--commonly known as self-defense--is a defense to the charge of (specify charge and its included offenses). The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justifiable. If the prosecution, does not meet its burden then you must find the defendant not guilty.~~

~~[The use of force upon or toward another person is justified when a person reasonably believes that such force is immediately necessary to protect himself/herself on the present occasion against the use of unlawful force by the other person. The reasonableness of the defendant's belief that the use of such protective force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be.]~~

~~[The use of deadly force upon or toward another person is justified when a person using such force reasonably believes that deadly force is immediately necessary to protect himself/herself on the present occasion against [death] [serious bodily injury] [kidnapping] [rape] [forcible sodomy]. The reasonableness of the defendant's belief that the use of such protective force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be.]~~

~~[The use of deadly force is not justifiable if the defendant, with the intent of causing death or serious bodily injury, provoked the use of force against himself/herself in the same encounter, or if the defendant knows that he/she can avoid the necessity of using such force with complete safety by retreating.]~~

~~“Force” means any bodily impact, restraint, or confinement, or the threat thereof.~~

~~“Unlawful force” means force which is used without the consent of the person against whom it is directed and the use of which would constitute an unjustifiable use of force [or deadly force].~~

~~“Deadly force” means force which the actor uses with the intent of causing, or which he/she knows to create a substantial risk of causing, death or serious bodily injury.]~~

~~[Intentionally firing a firearm in the direction of another person or in the direction which the person is believed to be constitutes deadly force.]~~

~~[A threat to cause death or serious bodily injury, by the production of a weapon~~

~~or otherwise, so long as the actor's intent is limited to creating an apprehension that he/she will use deadly force if necessary, does not constitute deadly force.]~~

~~——— [“Bodily injury” means physical pain, illness, or any impairment of physical condition.]~~

~~——— [“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.]~~

~~——— [If and only if you find that the defendant was reckless in having a belief that he/she was justified in using self-protective force against another person, or that the defendant was reckless in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of his/her use of force against the other person, then the use of such self-protective force is unavailable as a defense to the offense of (any offense the requisite mental state of which is either reckless or negligent conduct).]~~

~~——— [The use of force is not justifiable to resist an arrest that the defendant knows is being made by a police officer, even if the arrest is unlawful. On the other hand, if the police officer threatens to use or uses unlawful force, the law regarding use of protective force would apply.]~~

### **7.01A. Self-Defense When The Use of “Deadly Force” Is At Issue.**

Self-defense is a defense to the charge(s) of (specify charge and its included offenses). Self-defense involves consideration of two issues. First, you must determine whether the defendant did or did not use “deadly force.” Second, you must determine whether the force used was justified. The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

The first issue is: Did the defendant use “deadly force?”

“Deadly Force” means force which the defendant uses with the intent of causing, or which he/she knows to create a substantial risk of causing, death or serious bodily injury.

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.

[Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.]

[Intentionally firing a firearm in the direction of another person or in the direction which the person is believed to be constitutes deadly force.]

[A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he/she will use deadly force if necessary, does not constitute deadly force.]

If you determine that the defendant used "deadly force," then you are to proceed to the section in this instruction entitled "Deadly Force Used." If you determine that the defendant did not use "deadly force," then you are to proceed to the section in this instruction entitled "Deadly Force Not Used." You must then follow the law in the applicable section to determine the second issue, which is whether the force used by the defendant was justified.

### **"Deadly Force" Used**

The use of deadly force upon or toward another person is justified if the defendant reasonably believes that deadly force is immediately necessary to protect himself/herself on the present occasion against [death] [serious bodily injury] [kidnapping] [rape] [forcible sodomy]. The reasonableness of the defendant's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the deadly force was used.

[The use of deadly force is not justifiable if the defendant, with the intent of causing death or serious bodily injury, provoked the use of force against himself/herself in the same encounter].

[The use of deadly force is not justifiable if the defendant knows that he/she can avoid the necessity of using such force with complete safety by retreating, but the defendant is not required to retreat from his/her own dwelling unless he/she was the initial aggressor. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of

lodging.]

[The use of deadly force is not justifiable if the defendant knows that he/she can avoid the necessity of using such force with complete safety by retreating, but the defendant is not required to retreat from his/her place of work unless he/she was the initial aggressor or is assailed in his/her place of work by another person whose place of work the defendant knows it to be.]

[The use of deadly force is not justifiable if the defendant knows that he can avoid the necessity of using such force with complete safety by [surrendering possession of a thing to a person asserting a claim of right thereto] [complying with a demand that he abstain from any action which he has no duty to take], but when the defendant [is a public officer justified in using force in the performance of his/her duties, or is a person justified in using force in assistance of that public officer] [is a person justified in making an arrest or preventing an escape], the defendant is not obliged to desist from efforts to [perform the duty] [effect the arrest or prevent the escape], because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.]

### **“Deadly Force” Not Used**

The use of force upon or toward another person is justified if the defendant reasonably believes that force is immediately necessary to protect himself/herself on the present occasion against the use of unlawful force by the other person. The reasonableness of the defendant’s belief that the use of protective force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant’s position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be. The defendant may estimate the necessity for the use of force under the circumstances as he/she reasonably believes them to be when the force is used, without [retreating] [surrendering possession] [doing any other act that he/she has no legal duty to do] [abstaining from any lawful action].

[The use of force is not justifiable to resist an arrest which the defendant knows is being made by a law enforcement officer, even if the arrest is unlawful, but is justifiable if the officer threatens to use or uses unlawful force.]

[The use of force is not justifiable to resist force used by the occupier or possessor of property or by another person on his/her behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, but is justifiable if the defendant [is a public officer acting in the performance of his duties or a person lawfully assisting the officer therein] [is a person making or

assisting in a lawful arrest] [reasonably believes that force is necessary to protect himself/herself against death or serious bodily injury.]

[The use of confinement as force is justifiable only if the defendant takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can, unless the person confined has been arrested on a charge of crime.]

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.

"Unlawful force" means force which is used without the consent of the person against whom it is directed and the use of which would constitute an unjustifiable use of deadly force or force. A person cannot consent to the infliction of death, serious bodily injury, or substantial bodily injury.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Substantial bodily injury" means bodily injury which causes: [A major avulsion, laceration, or penetration of the skin]; [a burn of at least second degree severity]; [a bone fracture]; [a serious concussion]; [or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs].

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

[Self-defense is not available for the offense(s) of (specify any offense in which the requisite state of mind is either recklessness or negligence) if the prosecution proves that:

(1) the defendant was reckless in believing that he/she was justified in using deadly force or force against the other person; or

(2) the defendant was reckless in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of his/her use of deadly force or force against the other person.]

### **7.01B Self-Defense When Only Force Is At Issue.**

\_\_\_\_\_ Self-defense is a defense to the charge(s) of (specify charge and its included offenses). The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

\_\_\_\_\_ The use of force upon or toward another person is justified if the defendant reasonably believes that force is immediately necessary to protect himself/herself on the present occasion against the use of unlawful force by the other person. The reasonableness of the defendant's belief that the use of protective force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be. The defendant may estimate the necessity for the use of force under the circumstances as he/she reasonably believes them to be when the force is used, without [retreating] [surrendering possession] [doing any other act that he/she has no legal duty to do] [abstaining from any lawful action].

\_\_\_\_\_ [The use of force is not justifiable to resist an arrest which the defendant knows is being made by a law enforcement officer, even if the arrest is unlawful, but is justifiable if the officer threatens to use or uses unlawful force.]

\_\_\_\_\_ [The use of force is not justifiable to resist force used by the occupier or possessor of property or by another person on his/her behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, but is justifiable if the defendant [is a public officer acting in the performance of his duties or a person lawfully assisting the officer therein] [is a person making or assisting in a lawful arrest] [reasonably believes that force is necessary to protect himself/herself against death or serious bodily injury.]

\_\_\_\_\_ [The use of confinement as force is justifiable only if the defendant takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can, unless the person confined has been arrested on a charge of crime.]

\_\_\_\_\_ "Force" means any bodily impact, restraint, or confinement, or the threat thereof.

"Unlawful force" means force which is used without the consent of the person against whom it is directed and the use of which would constitute an unjustifiable use of force. A person cannot consent to the infliction of death, serious bodily injury, or substantial bodily injury.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

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[Self-defense is not available for the offense(s) of (specify any offense in which the requisite state of mind is either recklessness or negligence) if the prosecution proves that:

(1) the defendant was reckless in believing that he/she was justified in using force against the other person; or

(2) the defendant was reckless in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of his/her use of force against the other person.]

### **7.01A. Self-Defense When The Use of “Deadly Force” Is At Issue.**

Self-defense is a defense to the charge(s) of (specify charge and its included offenses). Self-defense involves consideration of two issues. First, you must determine whether the defendant did or did not use “deadly force.” Second, you must determine whether the force used was justified. The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

The first issue is: Did the defendant use “deadly force?”

“Deadly Force” means force which the defendant uses with the intent of causing, or which he/she knows to create a substantial risk of causing, death or serious bodily injury.

“Force” means any bodily impact, restraint, or confinement, or the threat thereof.

[Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.]

[Intentionally firing a firearm in the direction of another person or in the direction which the person is believed to be constitutes deadly force.]

[A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor’s intent is limited to creating an apprehension that he/she will use deadly force if necessary, does not constitute deadly force.]

If you determine that the defendant used “deadly force,” then you are to proceed to the section in this instruction entitled “Deadly Force Used.” If you determine that the defendant did not use “deadly force,” then you are to proceed to the section in this instruction entitled “Deadly Force Not Used.” You must then follow the law in the applicable section to determine the second issue, which is whether the force used by the defendant was justified.

#### **“Deadly Force” Used**

The use of deadly force upon or toward another person is justified if the defendant reasonably believes that deadly force is immediately necessary to protect himself/herself on the present occasion against [death] [serious bodily injury]

[kidnapping] [rape] [forcible sodomy]. The reasonableness of the defendant's belief that the use of protective deadly force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be when the deadly force was used.

[The use of deadly force is not justifiable if the defendant, with the intent of causing death or serious bodily injury, provoked the use of force against himself/herself in the same encounter].

[The use of deadly force is not justifiable if the defendant knows that he/she can avoid the necessity of using such force with complete safety by retreating, but the defendant is not required to retreat from his/her own dwelling unless he/she was the initial aggressor. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of lodging.]

[The use of deadly force is not justifiable if the defendant knows that he/she can avoid the necessity of using such force with complete safety by retreating, but the defendant is not required to retreat from his/her place of work unless he/she was the initial aggressor or is assailed in his/her place of work by another person whose place of work the defendant knows it to be.]

[The use of deadly force is not justifiable if the defendant knows that he can avoid the necessity of using such force with complete safety by [surrendering possession of a thing to a person asserting a claim of right thereto] [complying with a demand that he abstain from any action which he has no duty to take], but when the defendant [is a public officer justified in using force in the performance of his/her duties, or is a person justified in using force in assistance of that public officer] [is a person justified in making an arrest or preventing an escape], the defendant is not obliged to desist from efforts to [perform the duty] [effect the arrest or prevent the escape], because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.]

### **"Deadly Force" Not Used**

The use of force upon or toward another person is justified if the defendant reasonably believes that force is immediately necessary to protect himself/herself on the present occasion against the use of unlawful force by the other person. The reasonableness of the defendant's belief that the use of protective force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be. The defendant may estimate the necessity for the use of force under the circumstances as he/she reasonably believes

them to be when the force is used, without [retreating] [surrendering possession] [doing any other act that he/she has no legal duty to do] [abstaining from any lawful action].

[The use of force is not justifiable to resist an arrest which the defendant knows is being made by a law enforcement officer, even if the arrest is unlawful, but is justifiable if the officer threatens to use or uses unlawful force.]

[The use of force is not justifiable to resist force used by the occupier or possessor of property or by another person on his/her behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, but is justifiable if the defendant [is a public officer acting in the performance of his duties or a person lawfully assisting the officer therein] [is a person making or assisting in a lawful arrest] [reasonably believes that force is necessary to protect himself/herself against death or serious bodily injury.]

[The use of confinement as force is justifiable only if the defendant takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can, unless the person confined has been arrested on a charge of crime.]

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.

"Unlawful force" means force which is used without the consent of the person against whom it is directed and the use of which would constitute an unjustifiable use of deadly force or force. A person cannot consent to the infliction of death, serious bodily injury, or substantial bodily injury.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Substantial bodily injury" means bodily injury which causes: [A major avulsion, laceration, or penetration of the skin]; [a burn of at least second degree severity]; [a bone fracture]; [a serious concussion]; [or a tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs].

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

[Self-defense is not available for the offense(s) of (specify any offense in which the requisite state of mind is either recklessness or negligence) if the prosecution proves that:

(1) the defendant was reckless in believing that he/she was justified in using deadly force or force against the other person; or

(2) the defendant was reckless in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of his/her use of deadly force or force against the other person.]

## **7.01B Self-Defense When Only Force Is At Issue.**

Self-defense is a defense to the charge(s) of (specify charge and its included offenses). The burden is on the prosecution to prove beyond a reasonable doubt that the force used by the defendant was not justified. If the prosecution does not meet its burden, then you must find the defendant not guilty.

The use of force upon or toward another person is justified if the defendant reasonably believes that force is immediately necessary to protect himself/herself on the present occasion against the use of unlawful force by the other person. The reasonableness of the defendant's belief that the use of protective force was immediately necessary shall be determined from the viewpoint of a reasonable person in the defendant's position under the circumstances of which the defendant was aware or as the defendant reasonably believed them to be. The defendant may estimate the necessity for the use of force under the circumstances as he/she reasonably believes them to be when the force is used, without [retreating] [surrendering possession] [doing any other act that he/she has no legal duty to do] [abstaining from any lawful action].

[The use of force is not justifiable to resist an arrest which the defendant knows is being made by a law enforcement officer, even if the arrest is unlawful, but is justifiable if the officer threatens to use or uses unlawful force.]

[The use of force is not justifiable to resist force used by the occupier or possessor of property or by another person on his/her behalf, where the defendant knows that the person using the force is doing so under a claim of right to protect the property, but is justifiable if the defendant [is a public officer acting in the performance of his duties or a person lawfully assisting the officer therein] [is a person making or assisting in a lawful arrest] [reasonably believes that force is necessary to protect himself/herself against death or serious bodily injury.]

[The use of confinement as force is justifiable only if the defendant takes all reasonable measures to terminate the confinement as soon as he/she knows that he/she safely can, unless the person confined has been arrested on a charge of crime.]

"Force" means any bodily impact, restraint, or confinement, or the threat thereof.

"Unlawful force" means force which is used without the consent of the person against whom it is directed and the use of which would constitute an unjustifiable use of force. A person cannot consent to the infliction of death, serious bodily injury, or substantial bodily injury.

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

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“Bodily injury” means physical pain, illness, or any impairment of physical condition.

[Self-defense is not available for the offense(s) of (specify any offense in which the requisite state of mind is either recklessness or negligence) if the prosecution proves that:

(1) the defendant was reckless in believing that he/she was justified in using force against the other person; or

(2) the defendant was reckless in acquiring or failing to acquire any knowledge or belief which was material to the justifiability of his/her use of force against the other person.]

## **10.00. Definitions of Terms Used in Chapter 10, Pattern Jury Instructions**

“Another” means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions. (The definition of this term is taken from HRS § 701-118)

“Building” includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

“Cable television service” means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

“Cable television service device” means any mechanical or electronic instrument, apparatus, equipment or device which can be used to obtain cable television services without payment of applicable charges therefor. A “cable television service device” does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business.

“Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

“Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

“Credit card” means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value.

“Deception” occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that

impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he/she does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

"Deprive" means:

(a) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it; or

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge, or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

"Distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"Dwelling" means a building which is used or usually used by a person for lodging.

"Enter" means to have any intrusion into a motor vehicle with the whole physical body, with any part of the body, or with any instrument in contact with the body introduced for the purpose of committing a crime against a person or against property rights.

"Enter or remain unlawfully" means person "enters or remains unlawfully" in or upon premises when he/she is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his/her intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

“Expired credit card” means a credit card which is no longer valid because the term shown on the credit card has elapsed.

“Government” means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition “state” includes any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Intent to defraud” means:

- (a) an intent to use deception to injure another's interest which has value; or
- (b) knowledge by the defendant that he is facilitating an injury to another's interest which has value.

“Issuer” means the business organization or financial institution which issues a credit card or its agent.

“Obtain” means when used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another.

“Owner” means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

“Person,” “he,” “him,” “actor,” and “defendant” include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association. (The definition of these terms is from HRS § 701-118)

“Premises” includes any building and any real property.

“Property” means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

“Property of another” means property which any person, other than the

defendant, has possession of or any other interest in, even though that possession or interest is unlawful.

“Receives” or “receiving” includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

“Revoked credit card” means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

“Services” includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

“Stolen” means obtained by theft or robbery.

“Unauthorized control over property” means control over property of another which is not authorized by the owner.

“Widely dangerous means” includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

## **10.00. Definitions of Terms Used in Chapter 10, Pattern Jury Instructions**

“Another” means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions. (The definition of this term is taken from HRS § 701-118)

“Building” includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building.

“Cable television service” means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally.

“Cable television service device” means any mechanical or electronic instrument, apparatus, equipment or device which can be used to obtain cable television services without payment of applicable charges therefor. A “cable television service device” does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business.

“Cardholder” means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer.

“Control over the property” means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property.

“Credit card” means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value.

“Deception” occurs when a person knowingly:

(a) creates or confirms another's impression which is false and which the defendant does not believe to be true; or

(b) fails to correct a false impression which he previously has created or confirmed; or

(c) prevents another from acquiring information pertinent to the disposition of the property involved; or

(d) sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that

impediment is or is not valid, or is or is not a matter of official record; or

(e) promises performance which he/she does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that he/she did not subsequently perform the promise.

The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group.

"Deprive" means:

(a) to withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to him; or

(b) to dispose of the property so as to make it unlikely that the owner will recover it; or

(c) to retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(d) to sell, give, pledge, or otherwise transfer any interest in the property; or

(e) to subject the property to the claim of a person other than the owner.

"Distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"Dwelling" means a building which is used or usually used by a person for lodging.

"Enter" means to have any intrusion into a motor vehicle with the whole physical body, with any part of the body, or with any instrument in contact with the body introduced for the purpose of committing a crime against a person or against property rights.

"Enter or remain unlawfully" means person "enters or remains unlawfully" in or upon premises when he/she is not licensed, invited, or otherwise privileged to do so. A person who, regardless of his/her intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he/she defies a lawful order not to enter or remain, personally communicated to him/her by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

“Expired credit card” means a credit card which is no longer valid because the term shown on the credit card has elapsed.

“Government” means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition “state” includes any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Intent to defraud” means:

- (a) an intent to use deception to injure another's interest which has value; or
- (b) knowledge by the defendant that he is facilitating an injury to another's interest which has value.

“Issuer” means the business organization or financial institution which issues a credit card or its agent.

“Obtain” means when used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another.

“Owner” means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest.

“Person,” “he,” “him,” “actor,” and “defendant” include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association. (The definition of these terms is from HRS § 701-118)

“Premises” includes any building and any real property.

“Property” means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property.

“Property of another” means property which any person, other than the

defendant, has possession of or any other interest in, even though that possession or interest is unlawful.

“Receives” or “receiving” includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property.

“Revoked credit card” means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer.

“Services” includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use.

“Stolen” means obtained by theft or robbery.

“Unauthorized control over property” means control over property of another which is not authorized by the owner.

“Widely dangerous means” includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

**10.29. Robbery in the Second Degree—Use  
of Force: H.R.S. § 708-841(1)(a)**

(Applicable to offenses occurring on or after June 22, 2006)

[In count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of [committing theft] [taking a motor vehicle without consent], he/she uses force against the person of anyone present, with intent to overcome the person's physical resistance or physical power of resistance.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of [committing theft] [taking a motor vehicle without consent]; and

2. That [, while doing so,] the Defendant used force against the person of anyone present, with intent to overcome that person's physical resistance or physical power of resistance.

[A person commits theft if he/she [intentionally] obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.]

An act shall be deemed “in the course of [committing a theft] [taking a motor vehicle without consent]” if it occurs in an attempt to [commit theft] [take a motor vehicle without consent;] in the commission of [theft][taking a motor vehicle without consent] or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(a), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For statutory defense to theft, see instruction 10.11A.

**10.29. Robbery in the Second Degree—Use  
of Force: H.R.S. § 708-841(1)(a)**

(Applicable to offenses occurring on or after June 22, 2006)

[In count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

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There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of [committing theft] [taking a motor vehicle without consent]; and

2. That [, while doing so,] the Defendant used force against the person of anyone present, with intent to overcome that person's physical resistance or physical power of resistance.

[A person commits theft if he/she [intentionally] obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.]

An act shall be deemed “in the course of [committing a theft] [taking a motor vehicle without consent]” if it occurs in an attempt to [commit theft] [take a motor vehicle without consent] in the commission of [theft][taking a motor vehicle without consent] or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(a), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For statutory defense to theft, see instruction 10.11A.

**10.29A. Robbery in the Second Degree—  
Use of Force: H.R.S. § 708-841(1)(a)**

(Applicable to offenses that occurred on or before June 21, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of committing theft, he/she uses force against the person of anyone present, with intent to overcome that person's physical resistance or physical power of resistance.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of committing theft; and

2. That [, while doing so,] the Defendant used force against the person of anyone present, with intent to overcome that person's physical resistance or physical power of resistance.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(a), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For statutory defense to theft, see instruction 10.11A.

**10.29A. Robbery in the Second Degree—  
Use of Force: H.R.S. § 708-841(1)(a)**

(Applicable to offenses that occurred on or before June 21, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of committing theft, he/she uses force against the person of anyone present, with intent to overcome that person's physical resistance or physical power of resistance.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of committing theft; and

2. That [, while doing so,] the Defendant used force against the person of anyone present, with intent to overcome that person's physical resistance or physical power of resistance.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(a), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For statutory defense to theft, see instruction 10.11A.

**10.30. Robbery in the Second Degree—  
Threatened Use of Force: H.R.S. § 708-841(1)(b)**

(Applicable to offenses occurring on or after June 22, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of [committing theft] [taking a motor vehicle without consent], he/she threatens the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of [committing theft] [taking of a motor vehicle without consent]; and

2. That [, while doing so,] the Defendant [intentionally] threatened the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

[A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.]

An act shall be deemed “in the course of [committing a theft] [taking a motor vehicle without consent]” if it occurs in an attempt to [commit theft] [take a motor vehicle without consent;] in the commission of [theft][taking a motor vehicle without consent] or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(b), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—"property"

10.00—"property of another"

10.00—"unauthorized control over property"

For statutory defense to theft, see instruction 10.11A.

**10.30. Robbery in the Second Degree—  
Threatened Use of Force: H.R.S. § 708-841(1)(b)**

(Applicable to offenses occurring on or after June 22, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of [committing theft] [taking a motor vehicle without consent], he/she threatens the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of [committing theft] [taking of a motor vehicle without consent]; and

2. That [, while doing so,] the Defendant [intentionally] threatened the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

[A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.]

An act shall be deemed “in the course of [committing a theft] [taking a motor vehicle without consent]” if it occurs in an attempt to [commit theft] [take a motor vehicle without consent] in the commission of [theft][taking a motor vehicle without consent] or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(b), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—"property"  
10.00—"property of another"  
10.00—"unauthorized control over property"

For statutory defense to theft, see instruction 10.11A.

**10.30A. Robbery in the Second Degree—  
Threatened Use of Force: H.R.S. § 708-841(1)(b)**

(Applicable to offenses that occurred on or before June 21, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of committing theft, he/she threatens the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of committing theft; and

2. That [, while doing so,] the Defendant threatened the imminent use of force against anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(b), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For statutory defense to theft, see instruction 10.11A.

**10.30A. Robbery in the Second Degree—  
Threatened Use of Force: H.R.S. § 708-841(1)(b)**

(Applicable to offenses that occurred on or before June 21, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of committing theft, he/she threatens the imminent use of force against the person of anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of committing theft; and

2. That [, while doing so,] the Defendant threatened the imminent use of force against anyone who is present, with intent to compel acquiescence to the taking of or escaping with the property.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(b), 708-842, 702-206(1).

For definition of states of mind, see instruction:

6.02—“intentionally”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For statutory defense to theft, see instruction 10.11A.

**10.31. Robbery in the Second Degree—  
Recklessly Inflicts Serious Bodily  
Injury: H.R.S. § 708-841(1)(c)**

(Applicable to offenses occurring on or after June 22, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of [committing theft] [taking a motor vehicle without consent], he/she recklessly inflicts serious bodily injury on another.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of [committing theft] [taking a motor vehicle without consent]; and

2. That [, while doing so,] the Defendant recklessly inflicted serious bodily injury on another.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of [committing a theft] [taking of a motor vehicle without consent]” if it occurs in an attempt to [commit theft] [take a motor vehicle without consent;] in the commission of [theft][taking a motor vehicle without consent] or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(c), 708-842, 702-206(3).

For definition of states of mind, see instruction:

6.04—“recklessly”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For definition of terms *not* defined by H.R.S. Chapter 708, see instructions:

9.00—“serious bodily injury”

For statutory defense to theft, see instruction 10.11A.

**10.31. Robbery in the Second Degree—  
Recklessly Inflicts Serious Bodily  
Injury: H.R.S. § 708-841(1)(c)**

(Applicable to offenses occurring on or after June 22, 2006)

[In Count (count number) of the Indictment/Complaint, the] [The] Defendant, (defendant's name), is charged with the offense of Robbery in the Second Degree.

A person commits the offense of Robbery in the Second Degree if, in the course of [committing theft] [taking a motor vehicle without consent], he/she recklessly inflicts serious bodily injury on another.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of [committing theft] [taking a motor vehicle without consent]; and

2. That [, while doing so,] the Defendant recklessly inflicted serious bodily injury on another.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of [committing theft] [taking of a motor vehicle without consent]” if it occurs in an attempt to [commit theft] [take a motor vehicle without consent] in the commission of [theft][taking a motor vehicle without consent] or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(c), 708-842, 702-206(3).

For definition of states of mind, see instruction:

6.04—“recklessly”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

10.00—“deprive”

10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For definition of terms *not* defined by H.R.S. Chapter 708, see instructions:

9.00—“serious bodily injury”

For statutory defense to theft, see instruction 10.11A.

**10.31A. Robbery in the Second Degree–  
Recklessly Inflicts Serious Bodily  
Injury: H.R.S. § 708-841(1)(c)**

(Applicable to offenses that occurred on or before June 21, 2006)

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There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of committing theft; and

2. That [, while doing so,] the Defendant recklessly inflicted serious bodily injury on another person.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(c), 708-842, 702-206(3).

For definition of states of mind, see instruction:

6.04—“recklessly”

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10.00—“control over the property”

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10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For definition of terms *not* defined by H.R.S. Chapter 708, see instructions:

9.00—“serious bodily injury”

For statutory defense to theft, see instruction 10.11A.

**10.31A. Robbery in the Second Degree–  
Recklessly Inflicts Serious Bodily  
Injury: H.R.S. § 708-841(1)(c)**

(Applicable to offenses that occurred on or before June 21, 2006)

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A person commits the offense of Robbery in the Second Degree if, in the course of committing theft, he/she recklessly inflicts serious bodily injury upon another.

There are two material elements of the offense of Robbery in the Second Degree, each of which the prosecution must prove beyond a reasonable doubt.

These two elements are:

1. That, on or about (date) in the [City and] County of (name of county), the Defendant was in the course of committing theft; and

2. That [, while doing so,] the Defendant recklessly inflicted serious bodily injury on another person.

A person commits theft if he/she obtains or exerts unauthorized control over the property of another with intent to deprive the person of the property.

An act shall be deemed “in the course of committing a theft” if it occurs in an attempt to commit theft, in the commission of theft, or in the flight after the attempt or commission.

**Notes**

H.R.S. §§ 708-841(1)(c), 708-842, 702-206(3).

For definition of states of mind, see instruction:

6.04—“recklessly”

For definition of terms defined by H.R.S. Chapter 708, see instructions:

10.00—“control over the property”

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10.00—“obtain”

10.00—“property”

10.00—“property of another”

10.00—“unauthorized control over property”

For definition of terms *not* defined by H.R.S. Chapter 708, see instructions:

9.00—“serious bodily injury”

For statutory defense to theft, see instruction 10.11A.

**13.49. Defense to Promoting:  
H.R.S. § 712-1240.1**

It is a defense to prosecution for (name of offense defined by Part IV of H.R.S. Chapter 12) that the Defendant [possessed] [distributed] the (~~specify drug~~) [dangerous] [harmful] [detrimental] drug [under authority of law as a practitioner] [as an ultimate user of the drug pursuant to a lawful prescription] ~~under legal authority~~. [as a person authorized by law].

The burden is on the prosecution to prove beyond a reasonable doubt that the Defendant did not [possess][distribute] the [dangerous][harmful][detrimental] drug [under authority of law as a practitioner][as an ultimate user of the drug pursuant to a lawful prescription][as a person authorized by law]. If the prosecution does not meet its burden, then you must find the Defendant not guilty.

**Notes**

H.R.S. § 712-1240.1.

This defense is applicable to offenses defined in Part IV of H.R.S. Chapter 12, see instructions 13.01 thru 13.47.

~~For practitioner defense, see instruction 13.48~~

**13.49. Defense to Promoting:  
H.R.S. § 712-1240.1**

It is a defense to prosecution for (name of offense defined by Part IV of H.R.S. Chapter 12) that the Defendant [possessed] [distributed] the [dangerous] [harmful] [detrimental] drug [under authority of law as a practitioner] [as an ultimate user of the drug pursuant to a lawful prescription][as a person authorized by law].

The burden is on the prosecution to prove beyond a reasonable doubt that the Defendant did not [possess][distribute] the [dangerous][harmful][detrimental] drug [under authority of law as a practitioner][as an ultimate user of the drug pursuant to a lawful prescription][as a person authorized by law]. If the prosecution does not meet its burden, then you must find the Defendant not guilty.

**Notes**

H.R.S. § 712-1240.1.

This defense is applicable to offenses defined in Part IV of H.R.S. Chapter 12, see instructions 13.01 thru 13.47.